R.7.46

THE LAW OF ENGLAND,

Touching
His Majesties Four Principal
SEALS, *viz.*

The *Great Seal*, the *Privy Seal*, the *Exchequer Seal*, and the *Signet*.

Also of
Those Grand Officers to whose
Custody these *Seals* are committed.

Etiam aperta monstrare plurimum prodest, quia interdum scimus, nec attendimus.
Senec. lib. 4 Epist. 95.

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Jus Sigilli:

OR, THE

LAW

OF

ENGLAND,

Touching

The Kings four principal Seals, *viz.* The *Great Seale*, the *Privie Seale*, the *Exchequer Seale*, and the *Signet*, &c.

THE Law of *England* to severall purposes, doth take especial notice of divers Seales, appertaining

to the Kings moſt Excellent Majeſty, *ſc.* The *Great Seale*, the *Privie Seale*, the *Exchequer Seale*, and the *Signet*. Of the *Great Seal* are we to treat in the firſt place: for the Rule, or Maxime is, *A principalioribus, ſeu dignioribus eſt inchoandum.*

I. *Of the Great or Broad Seal of* England.

THis Great Seale is in the cuſtody of the Lord Chancellor, or Lord Keeper, and there is a ſpecial Officer in the High Court of Chancery, called *Sigillator*, who hath the Sealing of writs, and other

Co. 2. Inſt. 554.

ther things, that passe the Great Seale.

The Chancellor of *England*, or the Keeper of the Great Seale of *England*, is a Lord by his Office, and is of the most honorable Privie Council, under whose hands passe all Charters, Commissions, and Grants of the King, corroborated or strengthned with the Broad Seale: without which Seale all such Instruments, by Law are of no force: And the reason is, because the King is in Intendment of Law a Corporation; and therefore passeth nothing firmely, but under the said Seale.

The Lord Keeper, by the statute of 5. *Eliz.* is 5. Eliz. c. 18.

declared to have, according to the Common Law of this Realme, the same, and the like place, Authority, Preheminence, Jurisdiction, Execution of Laws, and all other Customes, Commodities, and advantages, as hath the Lord Chancellor of *England* for the time being. And therefore it is to be observed, that where divers Statutes speak of the Chancellor, and of his Lieutenant, it must of necessity be intended of such a Lieutenant, as the Law doth allow of, and that cannot be of a Deputy, for the Chancellor cannot make a Deputy; but *Locum teneas* is to be taken for one that holdeth the place, or hath

Co. 4. Instit. 88.

Equal

Equal Authority of the Chancellor, & that is *Custos magni Sigilli:* and this is agreeable with the Judgement of the said Parliament in 5 *Eliz.* But all Questions, Scruples, and doubts are now taken away by the said Act of 5 *Eliz.* and at this day there being but one Great Seal, there cannot be both a Lord Chancellor, and a Lord Keeper of the Great Seal at one time, because both these are but one office, as it is declared by the said Act.

Note, that those statutes or Acts of Parliament, which make mention of the Lord Chancellor only do extend to the Lord Keeper also, as the statutes of 33 *H.* 6. c. 1. Co. 3. Inst. f. 104, & 113.

And 28 *H.* 8. cap. 15.

Having ſhewed you, in whoſe Cuſtody the Great Seale is, and that the Lord Keeper hath the ſame Authority, that the Lord Chancellor hath, it will not be much impertinent to preſent to the Candid Reader, the Etymology of the word *Chancellor*, his Antiquity, the manner how he is Created, his Qualifications, his Oath, and Duty, his Juriſdiction and Authority, his Honor and Precedency, his Priviledges, his Aſſiſtants, and laſtly the Officers that are attendant on his Lordſhip, by virtue of the Great Seale of England.

1. *The*

1. *The Etymology of the word Chancellor.*

THe name of Chancellor *Cassiodorus* fetcheth from *Crosse Grates* or *Latteſſes*, becauſe Chancellors examined matters within places ſevered apart, encloſed with partitions of ſuch croſſe Barres, which the Latines call *Cancelli*: Regard, ſaith he, to the Chancellor, what name you bear; it cannot be hidden, which you doe within Latteſſes. For you keep your Grates lightſome, your Barres open, and your Doores tranſparent as Windows. Whereby it is evident, that he ſate within Grates, where he was to be ſeen

on every side, and therefore it may be thought he took that name. But considering, it was his part (saith our *Camden*) to strike, and dash out with crosse Lines Latteis-like, those Letters, Commissions, Warrants, and Decrees passed against Law, and Right, or prejudicial to the Commonwealth, which not improperly they termed to *Cancell*, some think the name of *Chancellor* came from this Cancelling: and in a Glossary of latter time thus we read, *A Chancellor is he, whose Office is to look into, and peruse the Writings, and Answers of the Emperor; to Cancell what is written amisse, and to signe that which is well.*

Agreeable

Agreeable to this are the words of Sr. *Edward Cook*: The Judgement, ſaith he, in a *ſcire facias* to repeale the Kings Letters patents is this, *Quod prædictæ Literæ patentes dicti Domini Regis revocentur, Cancellentur, evacuentur, adnullentur, et vacuæ, & invalidæ pro nullis penitus habeantur, & teneantur; ac etiam quod Irrotulamentum eorundem cancelletur, caſſetur, & annihiletur &c.* Hereof our Chancellor of *England* (for foreign Chancellors, it may be, have not like Authority) is called *Cancellarius, à Cancellando*, i.e. *à digniori parte*, being the higheſt point of his Juriſdiction, to Cancell the Co. 4 Inſt. 88.

Kings Letters patents under the Great Seale, and damning the Inrolment thereof, by drawing ſtrikes through it, like a Latteſſe.

2. *The Antiquity of this Officer.*

BOth the Britiſh, and Saxon Kings had their Chancellors; as taking ſome few Examples before the Conqueſt; *Edward the Confeſſor* had *Reinbald* his Chancellor: He had alſo *Lefricke* to his Chancellor: King *Edgar* had *Adulph*: King *Edred* had *Thurkettle*: King *Edmond* the ſame: King *Athelſtan*, *Wolfine*, their Chancellors &c.

3. *His*

3. *His Creation.*

THe Lord Chancellor hath no Commiſſion by Letters patents, as all other Judges and Sheriffes have, but he receiveth only his Authority by the delivery unto him of the Great Seale of *England*; and other Grant, or Patent for this great Office, there needs not be, for that the perſon, to whom this Office is committed, hath the keeping of the Great Seale in his own hands. Thus ſayes one; and to the ſame Effect are the words of *Coke*: He is made Lord Chancellor of *England, per traditionem magni ſigilli ſibi per Dominum Regem*, and by taking his Oath. Co. 4. Inſt. 87.

Oath. But the forme and manner of ordaining a Chancellor was in the time of King *H.* 2. by hanging the Great Seal of *England* about the neck of the Chancellor Elect.

Camden f. 131.

Note, some have gotten it by Letters patents at will, and one for Term of his Life; but it was holden void, because an antient Office must be granted, as it hath been accustomed.

Co. 4. Inst. 87.

4. *His Qualifications.*

BEsides the natural Faculties (says Sr. *Jo. Davys*) and powers of his mind, which he ought to have in great perfection, he must be furnished with all Learning, that hath

hath any Relation to the publique good; *Divinity*, *Law*, *Policy*, *Morality* and especial *Eloquence*, to impart and communicate all the reſt. He muſt withall have a long, and univerſal Experience in all the Affaires of the Commonwealth: He muſt be accompliſhed, and abſolute in all points of Gravity, Conſtancy, Wiſedome, Temperance, Juſtice, Piety, Integrity, and all other vertues, fit for Magiſtracy, and Government; yet ſo as the ſame be ſeaſoned, and tempered with Affability, Gentleneſs, Humanity, Courteſie, howbeit without deſcending or diminiſhing himſelf, but ſtill reteining his

his dignity, ſtate, and honor. Briefely, he muſt be a perſon of ſuch vertue and worthineſs, as his Life may be a Cenſure, and his Example a Mirror for all other Magiſtrates. Theſe are the Excellencies, and perfections, wherewith the Chancellor muſt be qualified, and adorned. And thus qualified indeed is the Right Honorable Perſonage, that is now Lord High Chancellor of *England*.

5. *His Duty.*

THe Lord Chancellors Office and Duty is included in the Oath, that his Lordſhip taketh, upon the delivery of the Great Seale, and this ſame Oath conſiſteth upon

six parts; He shall Swear:

1. *That well and truly he shall serve our Soveraign Lord the King, and his people, in the Office of Chancellor.* Co. 4. Inst. 88.

2. *That he shall doe right to all manner of people, poore, and rich, after the Laws, and usages of the Realme.*

3. *That he shall truly counsel the King, and his Counsel he shall layn, and keep.*

4. *That he shall not know, nor suffer the hurt, and disheriting of the King, or that the Rights of the Crowne be decreased by any means, as far as he may lett it.*

5. *And if he may not lett it, he shall make it clearly,*

clearly, and expreſſely, to be known to the King, with his true advice, and counſel.

6. And that he ſhall doe, and purchaſe the Kings profit in all that he reaſonably may.

6. His Juriſdiction, Power and Authority.

THe Lord Chancellor is the chief perſon for matter of Juſtice (in Civil Cauſes eſpecially) next unto our Gracious Soveraigne Lord, the Grand diſpencer of the Kings Bounty, and Mercy: For whereas all other Judges in this Kingdome are tied to ſtrict Rules of Law, and may not ſwerve from them, in Judgement, the Lord Chancellor hath in

in this a more absolute Power, to moderate, and temperate the written Law, ordering all things, *juxta æquum, et bonum* and therefore he is sayd in our Books, to have two Powers, one Extraordinary, the other Ordinary; intimating, that though by his Ordinary power in some Cases, he must observe the forme of proceeding as other ordinary Judges, yet that in his Extraordinary power, he is not limited by the Law but by Conscience, according to the Circumstances of the matter in Question. And this appeares out of the words of my Lord *Coke*: In the Chancery, sayes he, are two Courts, one Ordinary,

dinary, *Coram Domino Rege in Cancellariâ*, wherein the Lord Chancellor proceeds according to the right line of the Laws, and Statutes of the Realme, *secundum Legem, et Consuetudinem Angliæ*. Another Extraordinary according to the Rule of Equity, *secundum æquum, & bonum*. vide 8 E. 4. 5. 9 E.4.15. 14 E.4.7. *Stamf. prær. c.* 20. *f.*65.b. *Plowdens Comment. f.*72. *Hob. Rep. Martin v. Marshal, & Key f.* 63. Of these two Powers I shall speak more particularly, as followeth:

Co.4.Inst. f 79. 3. Inst. f. 71.

1. The Lord Chancellor by his Ordinary power may hold plea of *Scire facias*, to repeale the Kings Letters Patents, under

under the Great Seal, being alwayes inrolled in the Court of Chancery, which ſaid Writ of *Scire facias*, to repeale, or cancell Letters Patents, doth lye in this Ordinary Courſe of Juſtice in 3 Caſes, *ſc.*

Firſt, when the King by his Letters Patents doth grant by ſeveral Letters Patents, one and the ſame thing to ſeveral perſons, the former Patentee ſhall have a *Scire facias*, to repeale the ſecond Patent.

Secondly, when the King granteth any thing, that is grantable, upon a falſe ſuggeſtion, the King by his prerogative *Jure regio*, may

may have a *Scire facias*, to repeale his own graunt.

Thirdly, when the King doth graunt any thing, which by Law he cannot graunt, he *Jure Regio* (for advancement of Justice, and Right) may have a *Scire facias*, to repeal his own Letters Patents.

The Lord Chancellor hath likewise power to hold plea of Petitions, *Monstrans de Droits*, Traverses of Offices, partitions in Chancery, of *Scire facias* upon Recognizances in this Court, writs of *Audita Querela*, and *Scire facias* in the nature of an *Audita Querela*, to avoyd Exe-

Co. 4. Inst. 79, & 80.

Executions in this Court; Dowments in Chancery, the writ *de Dote assignanda* upon Offices found, Execution upon the Statute staple, or Recognizance, in nature of a Statute staple upon the Act of 23 H. 8. but the Execution upon a Statute merchant is returnable either into the Kings Bench or into the Common Pleas, and all personal Actions by or against any Officer, or Minister of the Court of Chancery, in respect of their Service or Attendance there. Thus much of the Lord Chancellors Ordinary power, proceeding *secundum Legem, & consuetudinem Angliæ.*

2. The Lord Chancellor by vertue of his Extraordinary

traordinary power, that is absolute, and unlimited (though out of Discretion his Lordship doth entertaine some formes, which he may justly leave in special Cases) bindeth and looseth the proceedings of Law, and decideth Causes, by the Rules of his own Conscience; He being sole Judge both in the Court of Equity, and in the Court concerning the Common Law, but in Cases of weight or difficulty he doth assist himself with some of the Judges of the Realme, and no greater exception can be taken hereunto than in case of the Lord Steward of *England* being sole Judge in tryal of the Nobility, who also

Hobarts Reports Martin V. Marshall & Key.

Co.4.Inst. f. 84.

also is assisted with some of the Judges.

By vertue of this extraordinary power his Lordship judges according to his Conscience of all Covins, Frauds, and Deceipts, of Accidents, Breaches of Trust and Confidence, of Defects of Remedy at Law, of Incertainties, and the like. Thus much of the Lord Chancellors Jurisdiction ordinary, and extraordinary in the high Court of Chancery. I now proced to other Incidents of his Authority, and power, which he enjoyeth by the Delivery of the Broad Seal of *England*.

To his Lordship belongeth the constitution of the Justices of peace, and *Quorum* Lamberts Justice of peace Lib. 1. c. 5.

Quorum by Commission, throughout all *England*. And by the Act of 3 E. 6. c. 1. he was restored to his antient Authority, in naming the *Custos Rotulorum*.

Co. Litt. 96. a. 344. a. Davys Reports De capitulariter congregatis 46. b.

It appertaineth to the Chancellor of *England* to visit all Hospitalls, which be of the Kings Foundation, or of any of his Progenitors. And so likewise the Free-Chappels of the King, or of any of his Royal predecessors, no Ordinary shall visit, but onely the Chancellor of *England*.

To the Chancellor it belongeth, *Ratione Officii*, to pronounce the Cause of Summons at the beginning of a Parliament.

The

The Chancellor is to be preſent at all the Kings Councils, and thither to repair uncalled.

As often as the place of any of the Juſtices at Weſtm. by Death, or otherwiſe is void, the King uſeth to chooſe one of the Serjeants at Law, and him by his Letters patents to ordeine a Juſtice, in the place of the Judge ſo ceaſing, And then the Lord Chancellor of *England* ſhall enter into the Court, where the Juſtice is ſo lacking, bringing with him thoſe Letters patents, and ſitting in the middeſt of the Juſtices, cauſeth the Serjeant ſo elect, to be brought in, to whom in open Court he Forteſcue C. 51.

notifieth the Kings pleaſure, touching the Office of the Juſtice, then voyd, and cauſeth the aforeſaid Letters patents to be openly read: which done, the Maſter of the Rolls ſhall read before the ſame Elect perſon, the Oath that he ſhall take; which when he hath ſworn upon the holy Goſpel, the Lord Chancellor ſhall deliver unto him the Kings Letters aforeſaid.

Co. 4. Inſt. 81, & 82.

Note: Divers Acts of Parliament give Authority to the Lord Chancellor, to hear and determine divers offences and Cauſes in the Court of Chancery, which is ever intended in the Court proceeding, *ſecundum Legem et conſuetudinem*

etudinem Angliæ.

7. *His Honour and precedency.*

CAncellarii *Angliæ*, ſays *Fitz. Stephen*, *dignitas eſt, ut ſecundus à Rege in Regno habeatur:* The dignity of the Chancellor of *England* is this, He is reputed the Second perſon in the *Realme*, and next unto the King.

By the Statute of 31 *H.* 8. c. 10. the Lord Chancellor hath the precedency of all other Great Officers of the *Realme.*

8. *His Priviledges.*

THe Lord Chancellor by the Statute of 21 *H.* 8. c. 13. may have three Chaplains, whereof every one may purchase a Licence, or dispensation, and receive and have two Benefices with Cure of Souls.

By the Stat. of 27 *H.* 8. c. 11. The Lord Chancellor may pass things through the Seals, without paying any Fees.

It is a priviledge appertaining to his Lordship, to present to all the Kings Churches or Benefices, which are under value, that is under 20 markes, and be in the Kings Gift, and

Plowd. Com. Hare v. Bickley 528.

and in *jure Coronæ*, and whereof his Majesty is Patron. But if the King have them by any collateral Title, the Lord Chancellor shall not have these presentments, but the King.

9. *His Assistants.*

IN the High Court of Chancery sit as Assistants to the Lord Chancellor in matters of Judgement, twelve Masters of Chancery, whereof the Chief and Principal is the Master of the Rolls, antiently called *Garden des Rolls*, *Clericus Rotulorum*, *Custos Rotulorum*: His Office is a very antient Office, and grantable either

Co. 4. Inst. 95.

ther for Life, or at Will, at the pleasure of the King. The house annexed to his Office, is called *Domus Conversorum*, so called because King *H.* 3. founded this house of Jewes as should be converted to the true Religion of Jesus Christ, and there should have maintenance, and allowance, which continueth to this day. King *E.* 3. *anno* 15. of his Reign, by Letters Patents annexed this House to the Office of *Custos rotulorum*, and this Office is grantable by Letters Patents.

10. *His*

10. *His Attendants.*

THe Officers and Miniſters that do prinpally attend on his Lordſhip, and do their ſervice to the Great Seal, are, the Clerk of the Crown, the Clerk of the Hanaper, the Sealer, the Chaſe-Wax, the Controller of the Chancery, twenty four Courſitors, the Clerk of the preſentations, the Clerk of the faculties, the Clerk examiner of Letters Patents, the Clerks of the petty bag, the ſix Clerks, the two Examiners, and the Regiſters. Co. 4. Inſt. 82.

Having thus far ſpoken concerning the Antiquity, Creation, Qualifi-

cations, Juriſdiction, Dignity, Privileges &c. of that perſon, to whom the care and Cuſtody of the Great Seal of *England* is committed by our moſt Gracious Soveraign Lord the King, it followeth in order to ſhew you the Law of *England* immediately touching, and appertaining to this Great Seal, as 1. What a Seal is. 2. The Antiquity of Sealing. 3. What *ſigillus Regis* generally ſpoken means. 4. The manner of pleading any thing under the Great Seal. 5. What things muſt paſs the Great Seal to make them valid, and Authentique in our Law. 6. The remedy, or way to have things under the Great

Great Seal, as the Caſe ſhall require. 7. The Diverſitie betwixt a *Conſtat*, *Exemplification*, *Vidimus*, *Inſpeximus*, *Innoteſcimus*, *&c.* 8. and laſtly, The Counterfeiting the Great Seal of *England*.

1. *What a Seal is.*

Sigillus eſt, ſays *Coke*, *Cera impreſſa, quia ſine impreſſione non eſt Sigillum*; And therefore it is required that Deeds, Charters, or other writings muſt be Sealed; that is, have ſome Impreſſion upon the wax, otherwiſe they have not the validity, and force of Deeds without a Seal. Co 3. Inſt. f. 169.

2. *The Antiquity of Sealing.*

THe Sealing of Charters, and Deeds is much more antient than ſome, out of Error, have immagined, for the Charter of King *Edwin*, brother of King *Edgar*, bearing date *Anno Domini* 956. made of the Land called *Fecklea* in the Iſle of *Ely*, was not only Sealed with his own Seal (which appeareth by theſe words, *Ego Edwinus gratia Dei totius Britannnicæ telluris Rex meum donum proprio ſigillo meo confirmavi*) but alſo the Biſhop of *Wincheſtre* put to his Seal, *Ego Ælfwinus Winton.*

Co. Litt. f. 7. a.

Winton' Eccleſiæ divinus Speculator proprium ſigillum impreſſi: And the Charter of King *Offa*, whereby he gave the Peter-pence, doth yet remain under Seal. But no King of *England*, before, or ſince the Conqueſt, Sealed with any Seal of Armes, before King *R.* 1. but the Seal was the King, ſitting in a Chayr on the one ſide of the Seal, and on horſback on the other ſide in divers Forms.

3. *Sigillum Regis what.*

Sigillum Regis generally ſpoken is always intended the Great Seal *propter Excellentiam*, according to the Rules of the

the Common, and Civil Law.

Verbum æquivocum sumitur in partem digniorem, & potentiorem.

Verba æquivoca, & in dubio posita intelliguntur in digniori, et potentiori sensu.

Verba sunt semper intelligenda in potentiori significatu: And so is our *Bracton* to be understood Lib. 3. f. 119. where he saith; *Si aliquis accusatus fuerit, vel convictus, quod sigillum Domini Regis falsaverit, consignando inde Chartas, vel Brevia &c. pro voluntate Regis Judicium sustinebit.*

4. *The*

4. *The pleading a thing under the Great Seal.*

THe pleading of a Commiſſiom, or Proclamation, and doth not ſay, *Sub magno ſigillo*, whether it be good or no take theſe two following Caſes. *ſc.*

1. There was Covenant brought for not Building of an Houſe, where the Defendant covenanted, That he would erect three Houſes upon ſuch Land demiſed unto him, unleſs he were reſtrained by the Kings proclamation &c. The Defendant pleaded, That ſuch a day and year the King made a Proclamation, to reſtrain

Cro. 3. part Keyley v. Manning f. 180, 181.

reſtrain building; and thereupon the Plaintiff demurred; and the Cauſe ſhewn was, becauſe a Proclamation was pleaded, and no place expreſſed where the Proclamation was made, and ſo no viſne, if Iſſue ſhould have been joyned thereupon; Alſo becauſe it is not pleaded, to have been made *ſub magno Sigillo Angliæ*, otherwiſe it is not good. And of this Opinion were all the Court, upon the firſt motion, becauſe a Proclamation binds not, unleſs it be under the Great Seal, and if it be denyed, there can be no Iſſue thereupon (but only *Nul tiel Record*) which cannot be, unleſs he plead

it

it *ſub magno ſigillo*. But afterwards being again moved, *Jones*, and *Whitlocke* ſeemed to doubt thereof, becauſe when it is pleaded, that ſuch a Proclamation was made, it ſhall be intended duely made: as in *Reſcous*, it is returned, *Quod fecit warrantum*, although it be not pleaded in writing, yet it ſhall be ſo intended. But it was thereto anſwered, True it is when it is but by way of Inducement, but otherwiſe, when it is the Subſtance of the Plea: whereupon it was adjourned.

2. In the Caſe, betwixt *Stone* and *Newman*, it was moved upon Exceptions to the Pleading: One

One of them was, That the Indictment was by vertue of a Commission granted to divers persons, and he doth not say, *sub magno sigillo Angliæ*, And that the Attaynder was upon the Tryl baefore the Comissioners, and he doth not say, *sub magno sigillo*, so as, if it were not *sub magno sigillo*, it is not good. And in proof thereof, the pleading in the Common Bench, in *Moultons* Case was remembred, That the Commission was *sub magno sigillo*; And in *Huntleys* Case, in the Court of Kings Bench, because the Deprivation was found before the Commissioners Ecclesiastical *virtute Commissionis*, to them directed,

Cro. 3. part Stone v. Newman f. 461.

ed, and doth not ſay, *ſub magno Sigillo*, it was held to be ill, and *Coke* Lib. 5. f.51. Letters Patents were pleaded *ſub magno ſigillo*. And although it be true, that in *Plowd.Com.* in *Walſinghams* Caſe, it is pleaded as here, and doth not ſay, *ſub magno ſigillo*, and yet Judgement given; It was ſaid, That was becauſe no exception was taken thereto: And in *Coke* Lib. *Entr.*f.174. the Commiſſion is pleaded by Letters Patents, *ſub magno ſigillo*, and an Attaynder by vertue thereof, *& ibid.* 194. in the Care of Sr. *Moyle Finch* it was ſo likewiſe pleaded: ſo generally the pleading is *ſub magno ſigillo*: otherwiſe it is ill,

as

as no Attaynder pleaded. And of that Opinion was *Jones* at the firſt; but afterward upon ſearch of Preſidents, whereby it appeared, that ſometimes *Sub magno ſigillo* was omitted, and when it is ſhewn, *Quod per Literas Patentes Commiſſionis* (omitting *ſub magno ſigillo*) It is to be intended under the Great Seal and not otherwiſe. All the Court agreed, that although it were the better Courſe to ſhew, that it was *ſub magno ſigillo*, yet being ommitted, it is well enough, and good both ways: And they agreed, that here, according to the greater Opinion in the Exchequer Chamber,

Judge-

Judgement ſhould be entered for the Playntiff.

Note; Letters Patents being matter of Record, and ſhewn to the Court, under the Great Seal, cannot be denyed, neither can the party ſay, *Nul tiel Record.* Co. Litt. 260. a. Lib. 6. Edens Caſe.

5. *What things ought to paſs the Great Seal.*

1. *Auditors.*

THE nomination of Auditors in the Court of Wards ought to be under the Great Seal. *Coke Lib.* 11. *Auditor Curles* Caſe.

2. *Sum-*

2. *Summons in Parliament.*

He that declares the Cauſe of Summons in Parliament, not being Chancellor, or Lord Keeper, muſt at this day have a Commiſſion under the Great Seal. The form of that Commiſſion you may ſee in Mr. *Elſings Modus tenendi Parliamentum.*

3. *Kings Treaſure,*

No Officer of the King can diſpoſe of any part of the Kings Treaſure, for the profit, and Honour of the King, without warrant under the Great or Privie Seal. *Co. Lib.* 11.

Earle

Earle of *Devons* Case.

4. *An Office of Intitling.*

One *Tregose* was indicted of a *Præmunire* upon the Statute of 13 *Eliz.* and afterward made a gift in Tail of that Land, and was after attaynted by Verdict, and had Judgement for the said Offence; And it was afterwards found by Inquisition, upon a Commission out of the Exchequer, that *Tregose* was seised in Fee of those Lands at the time of the Offence committed; And that the Queen by Patent granted those Lands to Sr. *Geo. Cary &c.* One of the Questions was, whether this Patent after the Inqui-

Cro. 3. part. Grosse v. Gager.

Inquisition by Commission under the Exchequer Seal (no Office being found by Inquisition under the Great Seal) be good by the Statute of 18 *Eliz.* c. 2. which makes Patents upon valuable Consideration good, notwithstanding there be not any Inquisition under the Great Seal? It was resolved, that in this Case nothing vested in the King, untill Office found; and it ought to be an Office by Commission under the Great Seal; For the Frank-tenement, being in the party offending at the time of the Attaynder, it shall not be divested from him, and in the King without Office by Commission under the Great

Great Seal which is only an Office to intitle the King, and not by Inquisition, by vertue of a Commission under the Exchequer Seal, which is but for Instruction, or Information to the King, and for his Officers, to put the Lands holden of the King in Charge: but here the Lands are not come unto the King, until Office found.

5. *Reteiner.*

If a man be indicted of Felonie, and found guilty, and being in Prison, the King may retain him to serve in his Wars, on this side, or beyond the Seas, but this *Reteynner* must be under the Great

Great Seal. *Co.* 3. *Inſt. f.* 239.

6. *Private Acts not Printed.*

All ſuch private Acts as are not imprinted, if a man will have the ſame Exemplified, he muſt tranſmit the ſame to the Lord Chancellor, to be ingroſſes, and ſealed under the Great Seal.

7. *Eſſoyne and Protection.*

No *Eſſoyne de ſervitio Regis*, or writ of Protection can be warranted, or allowed, unleſs it be under the Great Seal, and the Reaſon is, becauſe they tend to the delay of Juſtice,

ſtice, if they be not duely obteined, and therefore the Law requireth the Great Seal. *Co. Litt.* 131. *a. Co.* 2. *Inſt. f.* 555.

1. *Travelling beyond Seas.*

The King may graunt Licence to travel beyond Seas, either under the Great Seal, Privy Seal, or Signet, but he cannot recall one that is beyond Seas, but by the Great Seal or Privy Seal. *Co.* 3. *Inſt. f.* 179. & 180.

9. *Guardian of England.*

The Parliament cannot begin but by the Royall Preſence of the King, either in Perſon or by Re-

preſentation: By Repreſentation two ways, either by Guardian of *England* by Letters Patents, when the King is *in Remotis* out of the Realm, or by Commiſſion to certain Lords of Parliament repreſenting the Perſon of the King, he being within the Realm, in reſpect of ſome Infirmitie. Either of theſe ways, *viz.* by Letters Patents, or Commiſſion it muſt be under the Great Seal. *Co.4. Inſt. f.6.*

10. *Steward of England.*

The *Steward* of *England* for the Tryal of a Nobleman muſt be conſtituted by the Kings Commiſſion under the Great

Great Seal of *England*. *Co.* 3. *Inſt. f.* 28.

11. *Perſon accuſed of Treaſon.*

A diſcharge from the King of further proceeding againſt a Perſon accuſed of Treaſon, or Felony, muſt be under the Great Seal of *England*. *Co.* 3. *Inſt. f.* 239.

12. *A Ward.*

A Queſtion was, whether a Leaſe for years, *durante minore ætate*, may be under the Seal of the Court of Wards, or ought to be under the Great Seal? And the Court held it, to be well enough,

under the Seal of the Court of Wards, and so hath ever been the practice, since the Creation of the Court of Wards: And they likewise held, That a Lease of the Land might be well before Office: But of the Body it cannot be granted but under the Great Seal, and after Office. *Cro.* 1. Part, *West v. Lassels.*

13. *Clayms before a Coronation.*

At every *Coronation* the Lord Steward of *England* hath a Commission *hac vice*, to hear, and determine the Claymes for grand Serjeanties, and other honourable Services to be done at the *Coronation*

tion for the ſolemnization thereof, and this Commiſſion is under the Great Seal of *England*. *Co.* 4. *Inſt. f.* 59.

14. *Preſident of the Council.*

The Office of the *Preſident* of the *Council* was never granted but by Letters Patents under the Great Seal. *Co.* 4. *Inſt. f.* 55.

15. *Riotts, Extortions &c.*

For Riotts, Extortions, Oppreſſions, &c. by perſons done againſt the Kings Peace, and Laws, to divers of his Liege people, Commandment hath been

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and is given by the Kings Writ under the Great Seal, to appear before the King in Chancery, &c. *Co. 4. Inst. f. 61.*

16. *Redress of Delays.*

The Commission, and power of a Prelate, two Earls, and two Barons to redress delays of Judgement must be under the great Seal. *Co. 4. Inst. f. 69.*

17. *Judges discharged.*

The Chief Justice of the Kings Bench, and the rest of the Judges may be discharged by Writ under the Great Seal. *Co. 4. Inst. f. 75.*

18. *Pro-*

18. *Proceſs in Star-chamber.*

All the writs, and proceſs of the Court of Star-chamber are under the Great Seal. *Co.* 4. *Inſt. f.* 63, & 66.

19. *The Office of the Treaſurer.*

The Lord Treaſurer of *England* hath granted to him by Letters Patents under the Great Seal, *Theſaurariam Scaccarii Regis Angliæ*, which of antient time was a diſtinct Office by it ſelf. *Co.* 4. *Inſt. f.* 105.

20. *Lands in the Kings Hands.*

To the end that no Lands in the Kings Hands, which ought to be to the Kings Profit, ſhould be without a Farmor, that ſhould yield a Rent to the King, the Treaſurer in certain Caſes, and with certain Cautions ought to make a Warrant to the Great Seal for demiſing thereof. *Co.* 4. *Inſt. f.* 111.

21. *Untrue Accompts in the Exchequer.*

The Court to Enquire of, and Certifie unlawful, and untrue Accompts in the Exchequer ſitteth by Com-

Commiſſion under the Great Seal. *Co.* 4. *Inſt. f.* 117.

22. *Armes, Sirname, and Barony.*

An Aſſignement to another of a mans Armes and Barony muſt be by Letters Patents under the Great Seal. *Co.* 4. *Inſt. f.* 126.

23. *Tryal of Treaſons &c. committed upon the Sea.*

The Court for the Tryal of all Treaſons, Felonies, Robberies, Murders and Confederacies, committed, or done upon the Sea by force of the Statute of 28 *H.* 8. *c.* 15. muſt be

by Commission under the Great Seal of *England*. *Co.* 4. *Inst. f.* 147.

24. *Beacons, Light-Houses, Sea-marks &c.*

At the Common Law none but the King only could erect Beacons, Light-Houses, and Sea-marks, which ever was done by the Kings Commission under the Great Seal. *Co.* 4. *Inst.* 148.

25. *Sewers.*

The Authority of those, that are employed about Sewers, is by Commission under the Great Seal of *England*. *Co.* 4. *Inst.* 275.

26. *Bank.*

26. *Bankrupts.*

The Authority of the Commissioners upon the Stat. of Bankrupts, is by Commission under the Great Seal. *Co.* 4. *Inst. f.* 277.

27. *The Isles of Jersey, Man, &c.*

Albeit the Kings Writ runneth not into the Isles of *Jersey*, *Garnsey*, *Man*, *&c.* yet his Commission doth, but then it must be under the Great Seal. *Co.* 4. *Inst. f.* 286.

28. *Com-*

28. *Commissioners in Causes Ecclesiastical.*

The Assignation, and Authorizing of Commissioners, to execute the Ecclesiastical Jurisdiction, which was restored to Q. Elizabeth, ought to be under the Great Seal. *Co.* 4. *Inst. f.* 326, & 327.

29. *Delegates.*

The Commissioners, called Delegates, do sit by force of the Kings Commission under the Great Seal of *England*. *Co.* 4. *Inst.* 339.

30. *Par-*

30. *Pardoning part of the Judgement.*

In the Case of High Treason, committed by a Nobleman, if all the Rest of the Judgement (saving the beheading, which is part of the Judgment) be pardoned, this ought to be under the Great Seal of *England*. *Co.* 3. *Inst.* *f.* 31.

31. *Prorogation of a Parliament.*

When the Parliament shall not begin at the day of the return, but for certain urgent Causes then to be prorogued until another day, then to be holden

en before the King, there is a ready way for the effecting thereof, and that is by Writ Patent under the whole Great Seal, &c. *Co. 4. Inst. f. 7.*

32. *Royal Assent.*

The Royal Assent, in the Kings Absence, to an Act of Parliament, is of validity and Force, if by Letters Patents under the Great Seal. *Co. 4. Inst. f. 28. 33 H. 8. c. 21.*

33. *Justice in Eyre.*

The Justice in Eyre of the Kings Forest, hath Authority, and Jurisdiction, to hear, and determin, touching Vert & Venison, &c.

&c. by force of Letters Patents under the Great Seal. *Co.4. Inſt. f.* 391.

34. *Foreſts Woods.*

When need is to ſell ſeaſonable woods within the Kings Foreſts, or Timber for his Majeſties uſe, the ſame muſt be ſold or taken by force of the Great Seal, or Exchequer Seal by view of the Foreſters. *Co.4. Inſt.* 299.

35. *The proceedings of the Parliament in Ireland.*

All the Bills of Ireland, which are affirmed or altered here in *England*, ought to be returned under the Great Seal of *England.*

land. Co. 4. Inſt. f. 353.

36. *The Iſle of Man.*

The Iſle of *Man*, which is no part of the Kingdom, but a diſtinct Territory of it ſelf hath been graunted by the Great Seal to divers Subjects, and their Heirs: It was reſolved by the Lord Chancellor, the two Chief Juſtices, and the Chief Baron that the ſame is an Eſtate deſcendible, according to the Courſe of the Common Law, for whatſoever Eſtate of Inheritance paſs under the Great Seal of *England*, it ſhall be deſcendible, according to the Rules, and Courſe of the Common Law of *England*.

Co.

Co. Litt. 9. a. Co. 4. Inſt. 284.

37. *The Kings Grant of Lands.*

By the Common Law no grant of any Lands is avayleable from the King, or pleadable, but under the Great Seal of *England*; But there are 3 Remedies, to have it under the Great Seal, as the Caſe ſhall require.

6. *The Remedy to have things under the Great Seal.*

1. A Man may have a *Duplicat* at the Sealing of the Letters Patents.

2. If they be loſt, he may have a *Conſtat*, upon Oath

Oath made that they be loſt, and that if they be found again, then they ſhall be reſtored again into the Chancery, to be Cancelled.

3. The Party may have an Exemplification upon the Inrollment.

Now an Exemplification is when a man will have any original Record written out, and exemplified forth of the Court, where it remains, to which purpoſe he may have a Writ, as appeareth by the Regiſter. *Orig. f.* 290.

And if a man will plead a Record in another Court than where it remaineth, it behooveth him to have this Record exemplified under the Great Seal of *Eng-*

England if he be denied, for it ought to come into the Chancery by *Certiorare*, and there to be exemplified under the Great Seal, for if it be exemplified under the Seal of the Common Pleas or of the Exchequer, or such like, this will not serve, unless in Evidence to a Jury. See *Co. Lib.* 5. *f.* 53.

But heretofore a Deed inrolled could not be pleaded, though it were exemplified under the Great Seal, without shewing forth the Deed it self under Seal: *vide* 32 *H.* 8. in Patents *Br.* 12 *H.* 7. 12. *b.* and not the exemplification: And so no *Constat*, or *Inspeximus* of the

the Kings Letters Patents were avayleable to be ſhewed forth in Court, but the Letters Patents under Seal. For both the *Conſtat* and *Inſpeximus* are but Exemplifications of the Inrollment of the Charters, or Letters Patents, and this appeareth by the Reſolution of two ſeveral Parliaments, one holden in the third, and fourth year of King *Ed.* 6. and the other in the 13. year of Q. *Eliz.* But now by thoſe Statutes the Exemplification, or *Conſtat* under the Great Seal of *England* of the Inrollment of any Letters Patents, made ſince the fourth day of February, *Anno* 27 *H.* 8. or after to be made, ſhall

3 & 4 E. 6. c. 4. & 13 *Eliz.* c. 6.

ſhall be ſufficient to be pleaded, and ſhewed forth in Court, as well againſt the King as any other perſon, by the Patentees themſelves, and by all and every other perſon or perſons, claiming by, from, and under them. Which Statutes are general, and beneficial, and eſpecially the Act of 13 *Eliz.* for that extends not only to Lands, Tenements, and Hereditaments, but to every other thing whatſoever, and ought to be favorably Conſtrued for advancement of the Remedy, and Right of the Subject. And ſeeing the aforeſaid Statutes do extend to make an Exemplification, or *Conſtat* of Letters Patents

to

to be pleadable, it will be not inconvenient, to shew the diversity betwixt an Exemplification, & a *Constat*, and the signification of other words, by which Letters Patents are commonly named, *viz. Inspeximus*, *Innoteſcimus*, & *Vidimus*.

7. *The difference betwixt a Constat, Inspeximus, & Vidimus.*

AN Exemplification, & an *Inspeximus* are all one, as an *Innoteſcimus*, and *Vidimus* are. *Co. Lib.* 5. *Pages* Caſe. An *Inspeximus*, or an Exemplification begins in this manner: *Carolus Secundus Dei gratia &c. Omnibus &c. Inspeximus*

imus Irrotulamentum quarundam Literarum Patentium &c. and it doth recite the Record word by word, and doth conclude in this Form: *Nos autem tenorem Literarum Patentium prædict. &c. ad Requisitionem A.B. duximus ad Exemplificandum per Præsentes. In cujus rei Testimonium &c.* And it is called an *Inspeximus*, because it beginneth after the Stile of the King with *Inspeximus*. And 'tis called an Exemplification a *Reipsa*, because the Record by it is Exemplified, as it doth appear by the end of it. *viz. Duximus ad Exemplificandum per Præsentes*; And the *Constat* doth begin after the Stile of the King: *viz.*

Con-

Constat nobis per Inspectionem Rotulorum Cancellariæ nostræ, quod Dominus Jacobus nuper Rex Angliæ Avus noster præchariſſimus Literas ſuas fieri fecit Patentes in hæc verba &c. Jacobus Dei gratia. &c. and reciteth all the Letters Patents word by word. *Nos autem pro eo quod Literæ Patentes prædict. ſunt caſualiter amiſſæ, ſicut A.B. nobis in Cancellariâ noſtrâ perſonaliter ſacramentum præſtiterit Corporale, & quod ipſe Literas prædictas, ſi eas in poſterum reperire contigerit nobis in Cancellariam noſtram reſtituerit Cancellandas, Tenorem Irrotulamenti prædicti ad Requiſitionem A. B. duximus ad exem-*

exemplificandum per præsentes. In Cujus Rei Testimonium &c. And it is called a *Constat*, for that after the style of the King it beginneth with this word *Constat*, but nothing is exemplified in the Tenor of the Record.

Also by what has been said, it is apparent that a man cannot have a *Constat* without an *Affidavit* (as it is seen by the form of the *Constat*) but an *Inspeximus* may be obtained without an *Affidavit*.

An *Innoteſcimus*, and a *Vidimus* be all one, They are alwayes of a Charter of Feoffment, or some other Instrument, which is not of Record; And the *Innoteſcimus* doth begin

gin in this Form: *Rex &c. Omnibus &c. Inſpeximus quoddam ſcriptum ten. per A. B. R. G. Sigillo ipſius A.B. Sigillat. ut dicitur in hæc verba: Sciant præſentes &c.* and reciteth the Inſtrument *de verbo in verbum, & hoc omnibus quorum intereſt, aut intereſſe poterit in præmiſſis innoteſcimus*; by reaſon of the word *Innoteſcimus* in the end, it is ſo ſtiled: and ſometimes it doth commence, *Vidimus quoddam ſcriptum &c.* and then 'tis called a *Vidimus*.

Further there are theſe Diverſities betwixt an Exemplification, and a *Conſtat*:

If the Kings Letters Patent

Patents be eaten with Ratts, or ſtayned by any means, the Patentee (as it is a received Opinion) cannot have a *Conſtat*, but he may have an Exemplification upon the Record, for that the *Conſtat* is never had, but upon the Loſing of the Patent.

Again: Strangers as well as Privies may have an Exemplification, but a *Conſtat* only lyes for thoſe that are Privies. 20 *H.* 7. 7. *b.*

I ſhall now conclude the Learning, touching Exemplifications with theſe following Quæres, with their Reſolutions:

Qu. 1. Whether that, which is to be Exemplified under the Great Seal, ought to be of Record?

Ref. Neither Deed, Charter, or other writeing, either Sealed, or without Seal, ought to be exemplified under the Great Seal, or any other Seal in Court of Record; for Seals of Courts of Record ought not to exemplify any thing, but that which is of Record, becauſe Records be publique, whereunto every Subject may have Recourſe, to confer the Exemplification with the Record it Self; And Records be in the Cuſtody of ſworn Officers, and therefore no Inconvenience can follow upon the Exemplification of them. But a Deed, Charter, and other writings are private,

Co.Lit. f. 225.b.

Co.3.Inſt. 173.

vate, and remain in the Custody of the Party, and may be rased, interlined, or corrupted in points material, and if they should be exemplified, the Rasure, interlineation, and Corruption shall not appear therein. Also the Deed, Charter, or other writeing may be forged, and if they should be exemplified, then the exemplification might ever be shewed in evidence, and not the Deed *&c.* it self, and so the Forgery, and Falsity should never upon the view of the Deed, or of the Seal, or other things Rising upon the view, be discovered.

Qu. 2. Whether all Records may be exempli-

fied under the Great Seal of *England?*

Resp. No Record, or Inrolment of any Record,

Co. 3 Inst. 173. may be Exemplified under the Great Seal, but of a Record of the Court of Chancery, or other Record duely removed thither by *Certiorari &c.*

Qu. 3. Whether part of a Record can be Exemplified?

Co. 3. Inst. 173, & 174. *Resp.* No Exemplification ought to be of any part of a Letters Patents, or of any other Record, or of the Inrollment thereof, but the whole Record of the Inrollment thereof ought to be Exemplified, so that the whole Truth may appear, and not of such part, as makes for the

the one Party, and nothing, that makes againſt him, or that manifeſteth the Truth.

Qu. 4. How an Exemplification of any Grant, Inrolled at the Rolls, is to be ſued forth?

Reſ. If any Grant which hath paſſed the Great Seal, be inrolled in the Roles, and you would have it Exemplified, you muſt firſt ſearch in the Chappel of the Rolls for the Inrollment thereof, which being found, any Clerk of that Office may engroſs the ſame: then muſt you get it examined with the Inrollment, by two Maſters of Chancery, who muſt teſtify the ſaid Exemplification under

their hands, and then (it being ready for the Great Seal) you must bear the Docket thereof unto the Lord Chancellor, to examine, and peruse the same, which being by his Lordship allowed, it may pass the Great Seal, and be exemplified. Thus much of the Diversity betwixt a *Constat*, *Inspeximus*, *Vidimus &c.* with other matters appertaining to Exemplifications. I go on now to mention the Eighth, and last thing proposed, *viz.* The Counterfeiting the Great Seal.

8. *Crimen Falsi or Counterfeiting the Great Seal.*

BY the Stat. of 25 *E.* 3. *c.* 2. *de proditionibus*

bus, it is declared, that if any man counterfeit the Kings Great Seal, it is *Crimen læsæ Majestatis Anglicanæ*, High Treason against the King; which Counterfeiting before this Act, was High Treason by the Common Law, as appeareth by our antient Lawyers, *viz.* *Bracton*, *Fleta*, *Britton*, and *Horne*, in his Mirror of Justices.

A Compassing, Intent, or going about, says *Coke*, to counterfeit the Great Seal is no Treason, but there must be an Actual Counterfeiting, also it must be to the Likeness of the Kings Great Seal; the words be, *Counterface le Grand Seal le Roy*. Co. 3 Inst. 15.

Now what shall be said

a Forging, or Counterfeiting this Broad Seal take these few Examples.

Co. 3. Inst. 15. If the Lord Chancellor, or Lord Keeper put the Great Seal to a Charter &c. without warrant, this is no Treason, because the Seal is not counterfeited. But it seemeth by *Britton fol.* 10. *b.* that it was Treason at the Common Law, and of that Opinion is *Fleta f.* 29. *a.* but it is no Treason now (without Question) by the negative Clause of the Act aforesaid.

If a man take wax Lawfully imprinted with the Great Seal from one Patent, and fix it to a writeing purporting a grant from the King, there have been

been divers Opinions in this Case what the Offence is, which I shall rehearse.

In 40. Ass. which was about 15 years after the making of the Stat. of 25 *E.* 3. it was not holden High Treason, but a great Misprision, for that is no Counterfeiting of a new, but an abuse of the true Great Seal. 40. Ass. Pl. 33.

A Chaplein had fixed a Great Seal to a Patent of Dispensation with *Non Residence*, and this was holden a Misprision, and not High Treason, for it was an abuse of the Great Seal, and no Counterfeiting of it. 37 H. 8. Br. Treason.

G. Leake, a Clerk of Chancery joyned two clean

clean Parchments fit for Letters Patents so close together with mouth glew, as they were taken for one, the uppermost being very thin, and did put one Labell through them both, then upon the uttermost he writ a true Patent, and got the Great Seal put to the Labell, and so the Labell, and the Seal were annexed to both the Parchments, the one written, and the other Blank: He cut off the glewed Skirts round about, and took off the uppermost thin Parchment (which was written, and was a true, and perfect Patent) from the Labell, which with the Great Seal did still hang to the Parchment,

ment, then he wrote another Patent on the Blank Parchment, and did publiſh it as a good Patent. Hereupon one of the Queſtions was, whether this Offence be High Treaſon, or no? And upon Conference had between the Judges, it was reſolved by them, that this Offence was neither High Treaſon, nor Petit Treaſon, becauſe it is not within either of the Branches of the Stat. of 25 *E.* 3. but it is a very great Miſpriſion. Thus much of the Great Seal of *England*.

II. *Of the Privie Seal.*

Parvum Sigillum, the Little, or Petit Seal, after called *Privatum Sigillum*, the Privie Seal, is a Seal, that his moſt Sacred, and excellent Majeſty uſeth ſometime for a warrant, whereby things paſſed the Privie Signet, and brought to it, are ſent further to be confirmed by the Great Seal of *England*: Sometime for the ſtrength or Credit of other things, written upon Occaſions more Tranſitory, and of leſs continuance, than thoſe be that paſs the Great Seal.

Co. 2. Inſt. 554.

This Seal is in the Cuſtody of the Clerk of the Privie

Coke Ibid.

Privie Seal, called Keeper of the Privie Seal, after called Lord Privie Seal, of which great Officer *Fleta* ſaith thus: *Cuſtodi Sigilli privati aſſocientur Clerici honeſti, & circumſpecti, Domino Regi jurati, qui in Legibus & Conſuetudinibus Anglicanis notitiam habent pleniorem, quorum Officium ſit, ſupplicationes & Querelas Conquerentium audire, & examinare, & eis ſuper qualitatibus Injuriarum oſtenſarum, debitum Remedium exhibere per Brevia Regis:* By this antient writer (ſays Sr. *Ed. Coke*) three things are worthy of Obſervation: *ſc.* Lib. 2. c. 13.

1. That the Clerks Aſſociates to the Keeper of

of the Privie Seal, are thoſe we now call, Maſters of Requeſts, *Magiſtri à Libellis ſupplicum.*

2. Of what Quality ought theſe Maſters of Requeſts to be? They muſt have 3 Qualities:

1. They muſt be honeſt, and Circumſpect.

2. They muſt be ſworn to the Lord our King.

3. They muſt have a compleat, and full knowledge, or skill in the Laws, and Cuſtoms of this Realm.

3. To what end did they hear, and examine the matters, conteined in theſe Petitions? That they (being skilfull, and expert in the Laws) ſhould direct ſuch

such as petitioned the King, to take their Remedy, according to their Case, either at the Common Law, or in the Court of Chancery.

Further: this Keeper of the privy Seal is a Lord by his Office, under whose hands pass all Charters signed by the King, before they come to the Broad, or Great Seal of *England*, and he does besides his Oath of a Privie Counsellor, take a Particular Oath of the Privie Seal, which doth consist of 4. parts, *viz.*

1. That he, as far forth as his cunning and discretion suffereth, justly, and evenly Execute and Exercise the Office of the Keeper

Keeper of the Kings Privie Seal, to him by his Highneſs committed.

2. Not leaving, or eſchewing ſo to doe for Affection, Love, Meed, doubt, or Dread of any Perſon, or Perſons.

3. That he ſhall take ſpecial Regard, that the ſaid Privie Seal in all Places, where he ſhall divert unto, may be in ſuch ſubſtantial wiſe uſed, and ſafe kept, that no Perſon without the Kings ſpecial Commandment, or his Aſſent, or knowledg, ſhall move Seal, or imprint any thing with the ſame.

4. Generally, he ſhall obſerve, fulfil, and doe all, and every thing, which to the Office of the Keeper

er of the Kings Privie Seal duely belongeth, and appertaineth.

This is an Office, says *Coke*, of Great Truſt, and Skill, that he put this Seal to no grant without good warrant, nor with warrant, if it be againſt Law, undue or inconvenient, but that firſt he acquaint the King therewith.

Upon the Lord Privie Seal are Attendant four Clerks of the Privie Seal: They write, and make out all things, that be ſent by warrant, from the Signet to the Privie Seal, and are to be paſſed to the Great Seal; as alſo to make out (as they term it) Privie Seals, upon any ſpeciall Occaſion of his Majeſties

Co.2.Inſt. 555.Co.4. Inſt.f.55.

Majesties Affayrs, for Loan, or Lending of Money, or such Like.

27 *H.8.c.* 11. What Fees these Clerks of the Privie Seal, and likewise of the Signet shall have, for their writing, and payns, appears by the Stat of 27 *H.* 8. whereby it is enacted, that every Clerk, and Clerks of the Signet, and Privie Seal shall have and take for the writing of a Warrant: *sc.*

1. Upon a Bill for *Tales* of Reward o 1 o
2. For the gift of every Office o 1 8
3. For a Pension, Annuity, or wages o 1 8
5. For a Special Livery or other Perpetuity o 6 8
5. Upon

5. Upon every Bill for *Conge D'eſlyer*, Royal Aſſent, Reſtitution of Temporalties, Donatives, Advocations, Preſentations, or other Eccleſiaſtical matter 0 3 8

6. For the writing of every warrant upon a Placard, Licenſe, Pardon, or Sheriffs Reward 0 2 0

7. For the writing of every warrant on a Denizen 0 3 4

8. For the writing of a warrant for keeping an Ideot 0 1 8

9 For the writing of a warrant for keeping of a Ward 0 3 4

Thus much of the grand Perſon, to whom this

this Privie Seal is delivered, his Associates, and his Attendants; I now proceed to rehearse the Law of *England*, that is found in our Books, touching the Privie Seal it self: *viz.* what matters are avayleable, and what not under it.

1. *Essoyn or Protection.*

No Essoyn *de servitio Regis*, or Protection is avayleable under the Kings Privie Seal alone. *Co. 2. Inst. f. 555.*

2. *Money.*

Co. Lib. 11. Earl of Devonshires Case. A warrant of the King under the Privie Seal to Issue out Money out of his

his Coffers is ſufficient, becauſe it concerneth but a Chattel in poſſeſſion; but the Privie Seal is not a ſufficient warrant for inheritances, nor Chattels Reals, but only for Chattels Perſonals, as Money, &c. *Moores* Reports the Queen v. *Dodington f.* 476. Co Lib: Lanes Caſe.

3. *Matters of ſmall Moment.*

In Matters of ſmall Moment, and which can work no Delay to the Subject, the Privie Seal is ſufficient, as to grant a *ſuperſedeas* of a proceſs in the Kings own Caſe, or to grant a *Niſi Prius*, where the King is Party, or to allow a Plea againſt the

the King, to Cancel a Recognizance made to the King, to discharge a Debt, or the like. *Co. Lib.* 2. *Lanes* Case.

4. *An Atturney.*

The King may grant one to make an Atturney by his Letters Patents under the Privie Seal. 37 *H.* 6. 27. *b.*

5. *Peregrination.*

The King may grant License to Travel beyond the Seas under the Privie Seal, and may command Persons that are beyond Seas, by his writ under the Privie Seal, in *Fide & Ligeantia &c.* to return into

into the Kingdom, and if they return not, for their Contempt their Lands and Goods ſhall be ſeiſed, *Quouſque &c. Co. 3. Inſt. f. 179, & 180.*

6. *Abſence from Parliament.*

The Kings Licenſe to a Lord of Parliament to be abſent, and to make *Proxies*, may be under the privie Seal.

7. *The proceſs of the Dutchey.*

The Proceſs in the Court of the Dutchey Chamber is by Privie Seal, Attachment &c. *Co. 4. Inſt. f. 206.*

8. *Summons to the Great Council.*

The Summons to the Great Council (i.e. the Lords of Parliament) after King *E.*3. have been under the Privie Seal. *Elsing.*

9. *Precedency.*

Amongst the Kings Learned Council at Law a Privie Seal is sufficient to give Precedency. *Cro.* 3. part. *f.*376.

10. *Dutchey Land.*

It was said by the Court, that a grant of an Office of keeping the Courts of the Dutchey Land by Privie

vie Seal, is not good; but it ought to be by the Dutchey Seal. *Noys Reports*, Lord *Willoughby v. Kemp.*

11. *Sheriffs of London in Debt.*

1 *E.* 4. 14. *inter Brevia coram Baronibus, lou les viscounts Londres voylent aver eux excuse de* 14. *expose per Commandment le Roy south son signet, & non potuerunt, mes fuerunt chase al Privie Seal.*

12. *The Kings Treasure.*

A Privie Seal is not sufficient Authority to dispose of the Kings Treasure, unless where it be due, as appears by this

following Case.

An Information in the Exchequer, in the nature of an Accompt, was brought against *Dodington*, as Executor of Sr. *Walter Mildmay*, supposing that Sr. *Walter* had received money of the Queen, amounting to 1500 l. upon speciall verdict the Case was, that Sr. *Walter Mildmay* had recived annually out of the Exchequer 50 l. as a Fee for his Dyet for 30 years together, which was payd him by the Command of the Lord Treasurer, who had Authority by Privie Seal, to make Allowance, and payment of the Fees due; But in Truth these were not any Fees due: And whether

Cro. 1. part Dodingtons Case.

whether his Executor shall be charged with these summs so received was the Question. And after Argument it was adjudged, that he should be charged, for it was held, that this payment of the money by the appoyntment of the Lord Treasurer, was not allowable: For the Privie Seal is not sufficient Authoritie to dispose of the Q. Treasure, unless where it is due, and he disposing it otherwise, it is out of his Authoritie; And therefore the Executors ought to refund. Thus much of the Privie Seal, as we find in our Books of Law; I come to mention some Statutes.

It is ſaid, that *Deſouth le petit Seal, ne iſſera deſormes nul Brief que touche le Common Ley:* But the Act ſaith not, that all writs, which concern the Common Law ſhall paſs under the Great Seal, but no writ ſhall paſs under the Privie Seal, which touches the Common Law; For it is to be known, that the Courts of Kings Bench, and of the Common Pleas had at the making of the Statute ſeveral Seals, whereby they ſealed Judicial writs.

Art. ſuper Chartas c. 6.

Wee find a Petition of the Commons in 2 *H.* 4. that no writs, or Privie Seals be ſued out of the Chancery, Exchequer, or other Place, to any man

Rot. Par. 2 H. 4. nu. 69.

to

to appear upon a Pain &c. to answer &c. contrary to the Ordinary Course of the Common Law: whereunto the King answered, that such writs should not be granted without necessitie.

By an Act of Parliament not in Print, it is enacted that no Purveyor arrested for any misdemeanor shall have any Privie Seal, to cause such as arrested him to come before the Council, to answer the King, but have his Remedy by the Common Law. Rot. Par. Anno 28 E. 3. nu. 34.

By the Stat. of 11 *R.* 2. *c.* 10. it is provided, that Letters of the Privie Seal shall not be from henceforth sent in Da-

mage or prejudice of the Realme, or in disturbance of the Law.

Co.3.Inst. f.16.

By the Stat. of 25 *E.*3.c. 2. it is declared, and enacted, that the Counterfeiting the Kings Privie Seal is High Treason: This Statute naming the Great and Privie Seal, the Forging, and Counterfeiting the Privie Signet, or of the Sign Manual, was not within this Statute: But by the Stat. of 1 *Mar.* it is made High Treason in both Cases. Thus much of the Kings Privie Seal.

III. *Of*

III. *Of the Exchequer Seal.*

THe Seal belonging to the Court of Exchequer is in the Custody of the Chancellor, of whom these following, Authors speak thus: *sc.*

1. *Fleta: Officium Cancellarii est Sigillum Regis custodire simul cum Contrarotulis de proficuo Regni.* Lib. 2. C. 29.

2. *Ockam: Ad Cancellarium Scaccarii pertinet Custodia Sigilli Regis.*

3. *Plowden: L'eschequer ad Chancellor & Seal & les Briefes usuall en le Chancery en L'eschequer de seiser le Terre en tiel Case, sont pluis ancient, que le* Com. f. 321. a Information pur Mines.

Regiſter, *or le Treatiſe Prærogativa Regis*: The Exchequer hath a Chancellor, and Seal, and the writs uſual in the Chancery of the Exchequer, are more antient than *Prærogativa Regis*.

4. *Minſhæus*: The Office of the Chancellor of the Exchequer hath been thought by many, for the qualifying of the Extremities in the Exchequer: He ſitteth in the Court, and in the Exchequer Chamber, and with the reſt of the Court ordereth things to the Kings benefit: he is always in Commiſſion with the Lord Treaſurer, for the Letting of the Lands, that come to the Crown by the

Diſſo-

Diſſolution of Abbeys; and hath by Privie Seal from the King, power with others, to compound for Forfeiture of Bonds, and Forfeitures of Penall Statutes. He hath alſo much to doe in the Revenue come by the Diſſolution, and Firſt Fruits, as appeareth by the Acts and Statutes of uniting them to the Crown.

Thus much of the Office, and Antiquity of the Chancellor: I proceed to ſhew the Law of *England*, relating to the Exchequer Seal it Self, that is in the Cuſtody of the Chancellor. And we find, that this Seal is an Incident inſeparable to the Court of Exchequer, for the Sealing

ing of all Judicial Writs, &c. which for Administration of Justice Distributive to all men, are under the said Seal, and without which the Court cannot administer Justice: And therefore the profits, coming of this Seal, as of other Seals, belonging to other Courts, have been letten, and demised of antient and latter times, but the Seals themselves were never demised, or letten, nor could be, nor any other Keeper appoynted to be Keeper of them, than hath been time out of mind. Now what shall pass under the Exchequer Seal, or what shall be avayleable under it, take these subsequent

Co. 2. Inst. 555.

sequent Cases and Authorities, found in our Books of Law.

The Queen seised of a Mannor in the Right of her Crown, by her Steward granted Copyhold Lands parcell thereof to one by Copy, according to the Custome in Fee: And after the Queen under the Exchequer Seal, made a Lease of the same Lands to another for 21 years &c. Resolved, that the Lease under the Exchequer Seal was good, by usage there, for the Course of every Court is as a Law, of which the Common Law takes notice without alledging of it in pleading. And as the Court of Exchequer may

Co. Lib. 2. Lanes Case.

may demiſe the Kings Lands for years under its Seal, ſo it can alſo demiſe for Life, although by the Common Law, no grant of any Land is avayleable, or pleadable, but under the Great Seal of *England*, as hath been ſaid; And therefore in the Caſe betwixt *Kemp & Barnard*, upon a ſpecial verdict, the Queſtion was, whether a Leaſe by the King under the Exchequer Seal of Lands uſually demiſed to one for Life, Remainder for Life, Remainder to a third for Life, reſerving the uſuall Rent, ſhall be good or not? *Maynard* for the Defendant very much urged, that it could not be, but under

Cro. 3. part. f. 513. in Banco Regis.

under the Great Seal; For a Freehold cannot pass from the King, but by Patent under the Great Seal. But all the Justices held, that Leases for Life under the Exchequer Seal, being of Lands usually Leased, and reserving the antient Rent, are allowable: It being good for the Kings Benefit, that his Land shall not lye unletten. And *Jones* affirmed, that all the Barons of the Exchequer said, that it was their Course to demise as well for Life as for years, and it hath always been so allowed, and of their Course there this Court shall take Conusance.

Upon Demurrer Question

on was made, wether a Leaſe of a Mannor being forfeited to the Queen by Attaynder of Treaſon, may be granted under the Exchequer Seal. *Popham:* If any Mannor, or Land, of whatſoever value comes to the King by Attaynder, or otherwiſe, the Cuſtody thereof may be granted over, under the Exchequer Seal, by the Authority of the Lord Treaſurer, and Chancellor there, without ſpeciall warrant: For it is but a diſpoſing of the Profits, becauſe the King himſelf cannot manure it; And it is always Revocable, *Si quis plus dare voluerit:* So a Leaſe for years of anothers Land, which comes to the King

King by Attaynder, is but a Chattell in him, and vendable for his best profit, and therefore it is grantable under the Exchequer Seal; For it is as a Sale wherefore the grant is good, and to that Opinion the other Justices agreed.

An Office found by Inquisition, by vertue of a Commission, under the Exchequer Seal, is sufficient to intitle the King to a Chattell. Co. Lib 5. Knights Case. Co. Lib. 5. Pages Case.

An Office of Instruction or Information may be under the Exchequer Seal. Cro. 3. part Grosse v. Gayer.

Seasonable Woods within the Kings Forests, or Timber for his Majesties use, may be sold or taken Co. 4. Inst. f. 299.

as

as well by force of the Exchequer Seal, as the Great Seal.

16 *H.*7. 11.b Co. Litt. 260.a.

Note: It was said by the whole Court for Law, that a man may well say against a Record, certified under the Seal of the Exchequer, or Common Banke, *Nul Tiel Record*, because that is nothing but a *Transcript* of the Record: But to Letters Patents (as it hath been said before) under the Great Seal, a man cannot plead *Nul Tiel Record*.

Know likewise Reader, that of small things, Leases are wont to be made under the Exchequer Seal, as appears by many antient Precedents, before, and in the time of *Ed.*3.

and

and by Infinite Precedents since to this day; And such Leases made according to the said Precedents were allowed to be good: And there were 3. Causes of the Commencement of this usage:

1. For the multiplicity, that every poor man should be driven, for such infinite number of Leases, to sue to the King for Cottages, and other petty things, to pass by the Signature of the King, the Signet, the Privie Seal, and the Great Seal.

2. For necessity; lest a poor and indigent subject should be driven to a tedious Suit, and the Land will lye many times without a Tenant, to the Kings

Kings Damage.

3. For the Impossibilitie, because many times the subject was not able, nor the thing demised was not of value to pass the Great Seal: but to them that are Rich, *Cokes* advice is, to pass their Leases under the Great Seal, for this, says he, is a sure way.

IV. Of

IV. *Of the Signet.*

THis Seal is in the Cuſtody of the Principall Secretary, as well for Sealing his Majeſties private Letters, as alſo ſuch grants as paſs the Kings Hands by Bill aſſigned; And there are four Clerks of the Signet, called *Clerici Signeti*, attending on this Secretary in their Courſe, and were uſed to have their Dyet at his Table.

The Duty of theſe Clerks, is to write out ſuch grants, or Letters Patents, as paſs by Bill ſigned (that is, a Bill ſuperſcribed with the Signature,

ture, or ſigne Manual, or Royal Hand of the King) to the Privie Seal, which Bill being tranſcribed, and Sealed with the Signet is a warrant to the Privie Seal, and the Privie Seal is a warrant to the Great Seal.

Co. 2. Inſt. f. 556. Such was the wiſdome (ſays Sr. *Ed. Coke*) that whatſoever ſhould paſs the Great Seal, ſhould come through ſo many hands, to the end that nothing ſhould paſs that Great Seal, that is ſo highly eſteemed, and accounted of in Law, that was againſt Law, or inconvenient, or that any thing ſhould paſs from the King any ways, which he intended not, by undue, and ſurreptitious means. But

it

it is to be obſerved, that when any Act of Parliament doth Authoriſe the Lord Chancellor, or Lord Keeper, to make, or grant any Commiſſion, under the Great Seal, that he may make or grant the ſame without any further warrant, becauſe the King is Party to the Act of Parliament, and there cannot be a greater warrant to the Lord Chancellor, than an Act of Parliament. Co. 4. Inſt. f. 167.

Now of the Signet the Law in ſome Caſes taketh Notice; And therefore a *Ne exeat Regnum* may be as well under the Signet, as under the Great Seal; or in this Caſe the Subject ought to take notice, Co. Lib. 2. Lanes Caſe Co. 2 Inſt. f. 556.

as

as well of the Signet, as of the Great, or Privie Seal; Because this is but a Signification of the Kings Commandment, and nothing passes from him.

The King may grant License to travell beyond the Seas, under the Signet, but he cannot recall one that is beyond Seas by the Signet, but it must be by the Great, or Privie Seal: but note, that the Letters under the Great Seal, or Privie Seal to recall any from beyond Seas, ought to be served by some Messenger, who upon his Oath, is to make a Certificate thereof in the Chancery, and from thence a *Mittimus* to be sent into the Exchequer, and there-

Co. 3. Inst. f. 180.

Dyer. Hill. 2 Eliz. f. 176. 10. *H.* 4. 5.

thereupon a Commiſſion to be granted, to ſeiſe the Lands, and Goods of the Delinquent.

A warrant under the Signet is not ſufficient to iſſue any Treaſure of the King out of the Receipt, but it muſt be under the Great, or Privie Seal, as is ſaid before. Co. 4. Inſt. f. 116. Co. Lib. 2. Lanes Caſe.

A Diſcharge under the Privie Signet of a Debt due by the Sheriff was held not ſufficient, but he ought to have it under the Privie Seal, and then it is a good diſcharge in Law. Co. Lib. 2. Lanes Caſe.

This may ſuffice touching the Kings 4 principall Seals, of which our Common Law doth take eſpeciall notice: I ſhall now

put a period to this ſmall Tract, with a Demonſtration of the Manner (beſides what has been mentioned already) how things paſs the 3 Seals, *viz.* The Great Seal, the Privie Seal, and the Signet.

Concerning the Kings Letters Patents, this is the Courſe, ſaith an Author, in his diſcourſe of the High Court of Chancery: *viz.* If the Letters Patents paſs by the Bill ſigned without any Privie Seal, the Patent is ſubſcribed *per ipſum Regem*, and then the Bill ſigned remaineth with the Lord Chancellor for his warrant. And when it paſſeth by Bill ſigned, and Privie

Seal

Seal alſo, then the Privie Seal remaineth with the Lord Chancellor, and the Bill ſigned with the Clerk of the Signet, and the Lord Privie Seal hath an Extract of it, to make the Privie Seal by, and then the Letters Patents are ſubſcribed *per Breve de privato ſigillo*. And if *per Authoritatem Parliamenti* be added, then it muſt paſs according to the Statute of 27 *H.* 8. *c.* 11. And when the King ſigneth the Patents himſelf in the upper part, and the Signature, and the Great Seal do paſs together at one and the ſame time, then it is ſubſcribed *per ipſum Regem manu ſuâ propriâ*, And when it is made by

Authority of Parliament, then 'tis subscribed *per ipsum Regem, et totum Concilium in Parliamento*, or to the same Effect. *Co. Lib.* 8. The Princes Case.

Every warrant sent by the King to the Lord Chancellor, the Day of the Delivery of the same to the Chancellor shall be entred of Record in the Chancery, and the Chancellor shall cause Letters Patents to be made upon the same warrant, bearing date the day of the Delivery in the Chancery, and not before in any wise: And if any Letters Patents be from thence forth made to the Contrary, they shall be void, and holden for none by

the

the Stat. 18 *H.* 6 *c.* 1. And for the full expoſition of this Statute, ſee *Ludford* and *Grettons* Caſe in *Plowdens Commentaries*, and *Dyer*, *f.* 133. From the Stat. of 18 *H.* 6. I proceed to recite the very words of the Stat. of 27 *H.* 8. *c.* 11. that does direct, how, and in what manner, the Kings Grants, Writings, and Leaſes ſhall at this day paſs the 3 aforeſaid Seals.

It is enacted, that every Gift, Grant, or other writing which ſhall be made in writing by the Kings Highneſs or any of his moſt noble Poſterity, to any perſon, ſigned with his Graces ſigne, or the ſigne, or ſignes Manual of any of them, to be

paſſed under the Great Seal of *England*, ſhall be brought, and delivered to the Kings Principal Secretary, or to one of the Clerks of the ſignet for the time being, to be at the Office of the ſignet paſſed accordingly. Likewiſe that one of the Clerks of the Signet, to whom any of the ſaid writings ſigned with the Kings Hand, fortune to be delivered, ſhall by warrant of the ſame Bills, within the ſpace of 8 days, next after he ſhall have received the ſame, unleſs he have knowledge by the ſaid Secretary, or otherwiſe of the Kings Pleaſure to the Contrary, cauſe to be made in the

Kings

Kings name, Letters of warrant, ſubſcribed with the hand of the ſame Clerk, and ſealed with the Kings Signet, to the Lord Keeper of the Kings Privie Seal, for further Proceſs to be had on that behalf. And that one of the Kings Clerks of the Privie Seal, upon due examination had, by the ſaid Lord Keeper, of the ſaid warrant addreſſed to him from the Office of the Signet, ſhall within the ſpace of 8 days, next after he ſhall receive the ſame, unleſs the Lord Keeper of the Privie Seal do give them Commandment to the Contrary, make, or cauſe to be made by warrant of the afore-

ſaid warrant to the Lord Keeper of the Privie Seal, other Letters of like warrant, ſubſcribed with the name of the Clerke of the Privie Seal, to the Lord Chancellor, or Lord Keeper of the Great Seal, for the enſealing with it the ſaid Grants &c. of the King, according to the Tenor of the warrant to the Lord Chancellor, directed from the Officer of the Privie Seal, as is aforeſaid ſpecified.

Thus Reader, having preſented to thy view what I have met with all in our Books of Law, touching theſe 4 Seals, *viz.* The Great Seal, the Privie Seal, the Exchequer Seal, and the Signet, I conclude my

my mean Collections with theſe words : *ſc.*

Ego ſeram Immortalitatem precor ſupremo ſigillorum Domino, Regi noſtro Auguſtiſſimo, Carolo à Carolo, ut vita diuturna ſit, & æterna majeſtas.

FINIS.

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